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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,349	10/31/2001	Donald N. Cohen	R288-DB	2207

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EXAMINER

REVAK, CHRISTOPHER A

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,349

Applicant(s)

COHEN, DONALD N.

Examiner

Christopher A. Revak

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,789,190.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-6 of the instant application are envisioned by patent claims 1-3 in that claims 1-3 of the patent contain all the limitations of claims 1-6 of the instant application. Claims 1-6 of the instant application therefore are not patentably distinct from the earlier patent claims, and as such, are unpatentable for obvious-type double patenting.

3. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/841,064. Although the conflicting claims are not identical,

they are not patentably distinct from each other because claims 1-6 of the instant application are envisioned by Application No. 10/841,064 claims 1-18 in that claims 1-18 of the Application No. 10/841,064 contain all the limitations of claims 1-6 of the instant application. Claims 1-6 of the instant application therefore are not patentably distinct from Application No. 10/841,064 claims, and as such, are unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-xxx are rejected under 35 U.S.C. 102(e) as being anticipated by Cohen, U.S. Patent 6,789,190.

As per claim 1, it is disclosed by Cohen a packet transmission control system for managing traffic between two data networks wherein they each comprise hosts computers, communications lines, and transmitted data packets (col. 3, lines 3-5 and col. 4, lines 10-13). A firewall comprises hardware and software providing a single

(non-redundant) connection path between the networks and serves to control packet transmission between the networks (col. 4, lines 10-16 and as shown in Figures 7-9). Means for classifying data packets received at the firewall related to the consumption of a resource (col. 1, lines 47-56 and col. 4, lines 13-16). Means for associated a maximum acceptable transmission rate with each class of packets received at the firewall (col. 4, lines 13-16). Means for limiting the transmission rate from the firewall to the maximum acceptable transmission rate for each class of data packet (col. 2, line 57-63 and col. 4, lines 13-16). Attacks such as packet flooding (denial of service attack) cannot be effectively launched through the firewall comprises hardware and software providing a single (non-redundant) connection path between the networks (col. 3, lines 1-3; col. 4, lines 10-16; and as shown in Figures 7-9).

As per claim 2, it is taught by Cohen of identifying all packets as either originating from locations within or outside of the networks for transmission to another network (col. 6, line 59 through col. 7, line 3). The firewall limits the transmission rate for the data packets of each class from locations within one of the networks to provide proportionally fair forwarding service to other locations within the network that communicates through the non-redundant connection (col. 4, lines 10-20 and as shown in Figures 7-9).

As per claim 3, the teachings of Cohen disclose of identifying data packets as data packets sent from one of the networks in response to identified data packets received from another network and the firewall limits the transmission rate for the data packets of each class from locations within one of the networks to another of one of the

networks that are not sent in response to identified data packets received at the firewall from the other network (col. 4, lines 10-20 and col. 6, line 59 through col. 7, line 3).

As per claim 4, Cohen discloses of identifying data packets as requests for service of a type requiring transmission of data packets from locations within one of the networks to another network (col. 2, lines 44-52). The firewall measures the amount of service requested by each packet (col. 1, lines 47-56). The firewall limits the transmission rate for data packets that are requests for services based on the amount of service requested by those packets in order to limit the rate of usage of each type of service (col. 1, lines 47-56; col. 4, lines 10-20; and col. 6, line 59 through col. 7, line 3).

As per claim 5, it is taught by Cohen of identifying data packets as responses to earlier service requests of a type from a location within one of the networks requiring transmission of data packets to another network (col. 6, line 59 through col. 7, line 3). The firewall measures the amount of service consumed in order to send each identified data packet (col. 1, lines 47-56). The firewall limits the transmission rate for data packets that are requests for services of each type based on the amount of service delivered in response to previous requests (col. 1, lines 47-56; col. 4, lines 10-20; and col. 6, line 59 through col. 7, line 3).

As per claim 6, it is disclosed by Cohen of means for storing and recalling past measurements of amount of service provided for each type of service (col. 1, lines 21-24 & 47-56). The firewall limits the transmission rate for data packets that are requests for each type of service to limit the usage of each service over extended periods of time (col. 1, lines 47-56; col. 4, lines 10-20; and col. 6, line 59 through col. 7, line 3).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shin et al, US 2002/0138643 discloses of allowing data packets based on arrival rates.

Shimojo et al, U.S. Patent 6,643,256 discloses of assigning priority levels to data packets.

Schuba et al, U.S. Patent 6,725,378 discloses of classifying TCP packet source addresses.

Chen, US 2004/0264371 discloses of generating data rate limits for data packets to avoid packet flooding.

Plonka, "FlowScan: A Network Traffic Flow Reporting and Visualization Tool" discloses of examining traffic flow and maintaining counters based on the flow's classification.

Barford et al, "Characteristics of Network Traffic Flow Anomalies" disclose of measuring traffic flow to effectively identify anomalies.

Brownlee, "Traffic Flow Measurement: Architecture" discloses of measuring traffic flow.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-4:00pm.

Art Unit: 2131

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CR


June 10, 2005

Christopher Revak

AU 2131



6/10/05